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NO. 82-1425

In the Supreme Court of the United States

OCTOBER TERM, 1982

LOUIS J. BRAQUET, ET AL.,
Petitioners,

versus

THE ADMINISTRATORS OF
THE TULANE EDUCATIONAL FUND
Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of the
State of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Appeal for the Fourth Circuit of the State of Louisiana affirming the district court's dismissal of petitioners' lawsuit is reported at 419 So.2d 30. The Louisiana Supreme Court's denial of petitioners' application for a writ of certiorari or review is reported at 423 So.2d 1148.

COUNTERSTATEMENT OF THE CASE

The facts of the case are fully stated in the Louisiana Court of Appeal's opinion, 419 So.2d 30.

REASONS FOR DENYING THE WRIT

1. Petitioners[1] are seeking to broaden this litigation beyond its initial scope by raising constitutional issues that were neither plead in nor decided by the state trial or appellate court. The real issue, as framed by the Louisiana Fourth Circuit Court of Appeals, is "Did the building by Tulane[2] of the Myra Clare Rogers Memorial Chapel satisfy the intent of the testator?" 419 So.2d at 34. After analyzing the will, the applicable articles from the Louisiana Civil Code, and the facts presented at trial, the Court of Appeal agreed with the trial court that the testator's intent had been met.

In their petition for writ of certiorari, petitioners assert 1) that the Chair of Judeo-Christian Studies, which is taught in the Myra Clare Rogers Memorial Chapel, violates the First Amendment of the United States Constitution, and 2) that Louisiana Courts did not "properly apply the Louisiana Civil Code on probate matters equitably depriving petitioners of equal protection under the Fourteenth Amendment." (Petitioner's brief, pg. 10). It is equally important to point out what petitioners do not allege. They do not allege a conflict created by the

[1] Other than Louis J. Braquet, the petitioners are Louise Langendorf, Stella Trauth, Agnes Roniger, George G. Braquet, Peter E. Braquet, Regina Braquet and Fannye Braquet.

[2] The Administrators of the Tulane Educational Fund is the corporate entity that operates Tulane University. It has no parent companies, subsidiaries, or affiliates.

decision of a state court of last resort with a decision of another state court of last resort or a federal appeals court. Indeed, they cannot make such an allegation because the court of last resort in Louisiana, its Supreme Court, denied their writ application. Nor can they allege a state court decided an important question of federal law. The state appellate court specifically declined to rule on the constitutionality of Tulane's actions. 419 So.2d at 34. Therefore, petitioners present nothing in their writ application that warrants a grant of certiorari.

2. Petitioners' argument that the Chair of Judeo-Christian Studies violates the First Amendment of the United States Constitution ignores one very important fact—Tulane University is private. Tulane's private status has been recognized both by Louisiana and federal courts. *See, State vs. Board of Administrators of The Tulane Educational Fund,* 125 La. 432, 51 So. 483 (1910); *Guillory vs. The Administrators of Tulane University of Louisiana,* 212 F.Supp. 674 (E.D. La. 1962). In the latter case the federal district court reviewed the stated purpose of the school's incorporation, the powers vested in its Board of Administrators as a private body, the private source of the university's funds, and the essentially private nature of the educational endeavor conceived by Paul Tulane and concluded that the Administrators of the Tulane Educational Fund was a private corporation. *See,* 212 F.Supp. at 677-79. Furthermore, although petitioners allege that the Chair of Judeo-Christian Studies is housed on state land, at trial they offered no evidence to support the contention. As a practical matter, no part of Tulane's campus, including specifically Newcomb College where the Myra Clare Rogers Memorial Chapel is situated, lies on state land. The Newcomb College campus in particular was acquired from private citizens in 1908 and 1909. Petitioners also have not

demonstrated they have standing to attack religious studies at Tulane. In one of their earlier lawsuits against the chapel, *Langendorf vs. The Administrators of the Tulane Educational Fund*, 528 F.2d 1076 (5th Cir. 1976), they at least brought their challenge as federal taxpayers.[3] Here, petitioners do not bring a taxpayer suit or allege any other facts that could vest them with standing.

3. Even if petitioners were able to surmount their numerous other problems, they still would not be entitled to relief. The establishment of a teaching course of study, such as the Chair of Judeo-Christian Studies, does not constitute a violation of the First Amendment of the United States Constitution. A distinction has been drawn by this Court between "religious exercises" in publicly funded schools and the "study" of comparative religion:

> ...[I]t might well be said that one's education is not complete without a study of comparative religion or the history of Religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment. *Abington School District vs. Schempp*, 374 U.S. 203, 225, (1963).

See also; Epperson vs. Arkansas, 393 U.S. 97, 106 (1968); Brown, ed, *The Study of Religion in the Public Schools: An Appraisal* (1958); Louisell and Jackson, *Religion and Theology and Public Higher Education*, 50 Cal. L. Rev. 751

[3] The United States Fifth Circuit Court of Appeals still rejected their suit for lack of standing.

(1962). Therefore, even if, *arguendo*, the Myra Clare Rogers Memorial Chapel were built on state owned land, which respondent denies, the establishment of a Judeo-Christian teaching chair, operating from within the chapel for the objective study of religion, does not violate the First Amendment.

4. Petitioners have also alleged deprivation of Fourteenth Amendment rights because Louisiana courts did not properly apply Louisiana probate law. Petitioners do not allege that the Louisiana Civil Code on probate matters has been applied any differently in their case than in other cases which may have or may yet come before Louisiana courts. Rather, petitioners are heard to complain that the law has been misapplied. That the courts have failed to share petitioners' interpretation and application of the law does not constitute a denial of due process or equal protection. Objection to a state court's application of state law does not raise a federal question appropriate for review by the United States Supreme Court. *See, Agins vs. City of Tiburn*, 477 U.S. 255, 265 (1980); *Henry v. State of Mississippi*, 379 U.S. 443 (1965); *Patterson vs. Colorado ex Rel Atty Gen.*, 205 U.S. 454 (1907).

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of March, 1983, I have served three (3) copies of the above and foregoing Brief in Opposition upon James A. Wysocki, Room 1410, First National Bank of Commerce Building, New Orleans, Louisiana 70112, Counsel of Record for petitioners, by mailing same to him by first class U.S. mail, postage prepaid, and properly addressed.

MARC G. SHACHAT